

PATENT COOPERATION TREATY
PCT
INTERNATIONAL PRELIMINARY EXAMINATION REPORT
(PCT Article 36 and Rule 70)

Applicant's or agent's file reference ACM 2975 WO	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/EP 03/13682	International filing date (day/month/year) 01.12.2003	Priority date (day/month/year) 04.12.2002
<p>International Patent Classification (IPC) or both national classification and IPC A23L1/0534</p> <p>Applicant AKZO NOBEL N.V.</p>		
<p>1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p><input type="checkbox"/> This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).</p> <p>These annexes consist of a total of sheets.</p> <p>3. This report contains indications relating to the following items:</p> <p>I <input checked="" type="checkbox"/> Basis of the opinion II <input type="checkbox"/> Priority III <input type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability IV <input type="checkbox"/> Lack of unity of invention V <input checked="" type="checkbox"/> Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement VI <input type="checkbox"/> Certain documents cited VII <input type="checkbox"/> Certain defects in the international application VIII <input type="checkbox"/> Certain observations on the international application</p>		
Date of submission of the demand 22.06.2004	Date of completion of this report 03.12.2004	
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Couzy, F Telephone No. +49 89 2399-7503	



INTERNATIONAL PRELIMINARY
EXAMINATION REPORT

International application No. PCT/EP 03/13682

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

1-15 as originally filed

Claims, Numbers

1-9 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- the language of publication of the international application (under Rule 48.3(b)).
- the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- contained in the international application in written form.
- filed together with the international application in computer readable form.
- furnished subsequently to this Authority in written form.
- furnished subsequently to this Authority in computer readable form.
- The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- the description, pages:
- the claims, Nos.:
- the drawings, sheets:

5. This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

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**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

1. Statement

Novelty (N)	Yes: Claims	1-9
	No: Claims	
Inventive step (IS)	Yes: Claims	1-9
	No: Claims	
Industrial applicability (IA)	Yes: Claims	1-9
	No: Claims	

2. Citations and explanations

see separate sheet

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT - SEPARATE SHEET**

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Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

V.1 Reference is made to the following documents:

- D1: WO 03 003850 A (PROCTER & GAMBLE) 16 January 2003
- D2: US-A-3 418 133 (NIJHOFF GERARD J J) 24 December 1968
- D3: US-A-5 397 588 (ANTENUCCI ROBERT N ET AL) 14 March 1995
- D4: GB-A-1 485 112 (MERCK & CO INC) 8 September 1977
- D5: US-A-3 947 604 (MCGINLEY EMANUAL J ET AL) 30 March 1976
- D6: GB 879 325 A (GEN FOODS CORP) 11 October 1961
- D7: US-B1-6 399 134 (RENATI RONALD P ET AL) 4 June 2002
- D8: PATENT ABSTRACTS OF JAPAN vol. 1996, no. 06, 28 June 1996 & JP 08 038076 A (DAI ICHI KOGYO SEIYAKU CO LTD), 13 February 1996
- D9: DE 197 46 264 A (WOLFF WALSRODE AG) 29 April 1999
- D10: SIKKEMA D J ET AL: 'CARBOXYMETHYLCELLULOSE WITH XANTHAN GUM LIKE RHEOLOGY' MACROMOLECULES, AMERICAN CHEMICAL SOCIETY. EASTON, US, vol. 22, 1989, pages 364-366, XP002116799 ISSN: 0024-9297

3. The arguments put forward by the Applicant in his letter of 06.09.2004, received on 08.09.2004, may be summarised as follows:

- The characterisation of carboxymethyl cellulose (CMC) by use of the storage modulus and loss modulus parameters is well known in the art, thus allow to characterise the invention adequately,
- The celluloses of the prior art do not exhibit modulus characteristics as required by independent claim 1 of the present application,
- Accordingly, the prior art does not disclose nor suggest the claimed invention.

According to the description on p.3 li.29 - p.4 li.6, the carboxymethyl cellulose of the type required by independent claim 1 has been produced by a specific process, which explains its specific properties. It then appears appropriate to characterise it through physical parameters, in that case the modulus characteristics.

The Applicant furthermore showed on pages 5-11 of his letter that conventional (prior art) carboxymethyl celluloses do not demonstrate these modulus properties required by claim 1.

**INTERNATIONAL PRELIMINARY
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3. Novelty and inventive step

3.1 As explained above, novelty of claim 1 is brought by the selection of a carboxymethyl cellulose which has specific properties and is identified by its storage modulus and loss modulus properties.

None of the prior art documents discloses the use of such a carboxymethyl cellulose for the preparation of fruit based products. Thus, the claimed subject-matter is new (Art. 33 (2) PCT).

3.2 The use of the selected carboxymethyl cellulose allows to obtain technological advantages over prior art gelling systems in the manufacture of fruit based products, as mentioned on p.3 li.6-19 of the description and showed by the examples 1-4. This is not suggested by any of D1-D10, nor by WO 99/20657 which discloses the process by which these carboxymethyl celluloses are prepared. Thus, the claimed subject-matter involves an inventive step (Art. 33 (39) PCT).

3.3 The most relevant parts of the documents cited above are those mentioned in the International Search Report.

4. The subject-matter of all claims is industrially applicable in the sense of Art. 33 (4) PCT.